

## § 904.504

## 15 CFR Ch. IX (1–1–11 Edition)

### § 904.504 Administrative forfeiture proceedings.

(a) *When authorized.* This section applies to property that is determined under § 904.503 to have a value of \$500,000 or less, and that is subject to administrative forfeiture under the applicable statute. This section does not apply to conveyances seized in connection with criminal proceedings.

(b) *Procedure.* (1) NOAA will publish a Notice of Proposed Forfeiture once a week for at least three successive weeks in a newspaper of general circulation in the Federal judicial district in which the property was seized. However, if the value of the seized property does not exceed \$1,000, the Notice may be published by posting for at least three successive weeks in a conspicuous place accessible to the public at the National Marine Fisheries Service Enforcement Office, U.S. District Court, or the U.S. Customs House nearest the place of seizure, with the date of posting indicated on the Notice. In addition, a reasonable effort will be made to serve the Notice, as provided in § 904.3, on each person whose identity, address and interest in the property are known or easily ascertainable.

(2) The Notice of Proposed Forfeiture will:

(i) Describe the seized property, including any applicable registration or serial numbers;

(ii) State the time, place and reason for the seizure, including the provisions of law allegedly violated; and

(iii) Describe the rights of an interested person to file a claim to the property (including the right to petition to remit or mitigate the forfeiture).

(3)(i) Except as provided in paragraph (b)(4) of this section, any person claiming the seized property may file a claim with NOAA, at the address indicated in the Notice, within 30 days of the date the final Notice was published or posted. The claim must state the claimant's interest in the property.

(ii) Filing a claim does not entitle the claimant to possession of the property. However, it does stop administrative forfeiture proceedings.

(iii) If the claim is timely filed in accordance with this section, NOAA will refer the matter to the U.S. Department of Justice to institute forfeiture

proceedings in the appropriate U.S. District Court.

(4) If a claim is not filed within 30 days of the date the final Notice is published or posted in accordance with this section, NOAA will declare the property forfeited. The Declaration of Forfeiture will be in writing and will be served as provided in § 904.3, on each person whose identity and address and prior interest in the seized property are known or easily ascertainable. The Declaration will describe the property and state the time, place, and reason for its seizure, including the provisions of law violated. The Declaration will identify the Notice of Proposed Forfeiture, describing the dates and manner of publication of the Notice and any efforts made to serve the Notice as provided in § 904.3. The Declaration will state that in response to the Notice a proper claim was not timely received by the proper office from any claimant, and that therefore all potential claimants are deemed to admit the truth of the allegations of the Notice. The Declaration shall conclude with an order of condemnation and forfeiture of the property to the United States for disposition according to law. All forfeited property will be subject to disposition as authorized by law and regulations of NOAA.

(5) If the appraised value of the property is more than \$500,000, or a timely and satisfactory claim for property appraised at \$500,000 or less is submitted to NOAA, the matter will be referred to the U.S. Department of Justice to institute *in rem* proceedings in the appropriate U.S. District Court.

### § 904.505 Summary sale.

(a) In view of the perishable nature of fish, any person authorized to enforce a statute administered by NOAA may, as authorized by law, sell or cause to be sold, and any person may purchase, for not less than its domestic fair market value, fish seized under such statute.

(b) Any person purchasing fish subject to this section must deliver the proceeds of the sale to a person authorized to enforce a statute administered by NOAA immediately upon request of such authorized person. Anyone who does not so deliver the proceeds may be

subject to penalties under the applicable statute or statutes.

(c) NOAA will give Notice of the Sale as provided under §904.3, to the owner or consignee, if known or easily ascertainable, or to any other party that the facts of record indicate has an interest in the seized fish, unless the owner or consignee or other interested party has otherwise been personally notified. Notice will be sent either prior to the sale, or as soon thereafter as practicable.

(d) The proceeds of the sale, after deducting any reasonable costs of the sale, will be subject to any administrative or judicial proceedings in the same manner as the seized fish would have been, including an action in rem for the forfeiture of the proceeds. Pending disposition of such proceedings, the proceeds will, as appropriate, either be deposited in a NOAA suspense account or submitted to the appropriate court.

(e) Seizure and sale of fish is without prejudice to any other remedy or sanction authorized by law.

**§904.506 Remission of forfeiture and restoration of proceeds of sale.**

(a) *Application of this section.* (1) This section establishes procedures for filing with NOAA a petition for relief from forfeitures incurred, or alleged to have been incurred, and from potential forfeiture of seized property, under any statute administered by NOAA that authorizes the remission or mitigation of forfeitures.

(2) Although NOAA may properly consider a petition for remission or mitigation of forfeiture and restoration of proceeds of sale along with other consequences of a violation, the remission or mitigation of a forfeiture and restoration of proceeds is not dispositive of any criminal charge filed, civil penalty assessed, or permit sanction proposed, unless NOAA expressly so states. Remission or mitigation of forfeiture and restoration of proceeds is in the nature of executive clemency and is granted in the sole discretion of NOAA only when consistent with the purposes of the particular statute involved and this section.

(3) If no petition is timely filed, or if the petition is denied, prior to depositing the proceeds NOAA may use the

proceeds of sale to reimburse the U.S. Government for any costs that by law may be paid from such sums.

(4) If NOAA remits the forfeiture and the forfeited property has not been sold, then restoration may be conditioned upon payment of any applicable costs as defined in this subpart.

(b) *Petition for relief from forfeiture.* (1) Any person claiming an interest in any property which has been or may be administratively forfeited under the provisions of this section may, at any time after seizure of the property, but no later than 90 days after the date of forfeiture, petition the Assistant General Counsel for Enforcement and Litigation, NOAA/GCEL, 8484 Georgia Avenue, Suite 400, Silver Spring, Maryland 20910, for a remission or mitigation of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by the petitioner.

(2) The petition need not be in any particular form, but must set forth the following:

(i) A description of the property seized;

(ii) The date and place of the seizure;

(iii) The petitioner's interest in the property, supported as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;

(iv) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation of forfeiture and restoration of proceeds. If the claim is made after the property is forfeited, the petitioner must provide satisfactory proof that the petitioner did not know of the seizure prior to the declaration or condemnation of forfeiture, was in such circumstances as prevented him or her from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to violate the applicable statute on the part of the petitioner; and

(v) The signature of the petitioner, his or her attorney, or other authorized agent.

(3) NOAA will not consider a petition for remission or mitigation of forfeiture and restoration of proceeds while a forfeiture proceeding is pending in Federal court. Once such a case is